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Justices: Wetlands defined by states

By [LAURA MISJAK](#)

The State News

The definition of what wetlands are and when developers can build on them was the topic of a divided U.S. Supreme Court decision released Monday.

The court, in a 5-4 vote, ruled that Michigan wetland regulators might have misinterpreted the Clean Water Act when they refused to let two Michigan property owners build on wetlands.

The court voided rulings against June Carabell and John Rapanos, who wanted to build on wetlands near Lake St. Clair in Macomb County.

Carabell wanted to build condos on wetlands she owns about a mile from the lake, and Rapano to put a shopping mall on his property.

Instead of ruling in the property owners' favor, as they requested, justices said lower courts must reconsider whether or not ditches and drains near wetlands are waterways. The answer could change if contractors are allowed to build on them.

Zoology and fisheries and wildlife Professor Thomas Burton said navigable waterways and adjacent bodies are regulated, but the question of what is navigable is up for debate.

He said wetland protection and development dreams often clash, and this ruling is important to the nation, not just Michigan.

"The Supreme Court ruling has potential implications for the entire U.S.," he said. "It's been fought closely. If it would have been a straight ruling in favor of the state, everybody would have breathed a sigh of relief."

Steven Voice, president and owner of Voice Environmental Consulting Firm, which specializes in environmental and regulatory issues for developers, said one of the major points of contention is what exactly constitutes a wetland.

"I don't think they intend to regulate ditches," he said. "It's important to protect wetlands, and that's a good idea, but a lot of these ditches are establishing jurisdiction."

In the decision, Justice Antonin Scalia said the Army Corps of Engineers, which regulates wetlands, misinterpreted the term "waters of the United States."

"In applying the definition to 'ephemeral streams,' 'wet meadows,' storm sewers and culverts, man-made drainage ditches, and dry arroyos in the middle of the desert, the Corps has stretched the 'waters of the United States' beyond parody," he said.

Burton said that in the past, this case wouldn't be up for much debate in the Supreme Court.

"The judicial system is routinely in favor of the state," he said. "In the old Supreme Court, (the didn't have a prayer."

Until the lower courts decide on the cases, everything's up in the air, Burton said.

This was the first significant environmental ruling from the high court headed by new Chief Jus Roberts.

Jeremy Emmi, executive director of the Michigan Nature Association said the ruling didn't solve and opens the door for hundreds of state cases to determine the law.

"Most people agree wetlands need to be protected," he said. "But this could be the beginning o We can't just keep filling in wetlands because we want to build another strip mall." The court's conservative members wanted a more sweeping ruling, clearing the way for development of lai it was directly connected to waterways.

The court's four most liberal members said that such a ruling would reject three decades of pra the Army Corps of Engineers and threaten the environment. In the middle was Justice Anthony Kennedy who agreed with the overall opinion but not all of Scalia's points.

The Associated Press contributed to this report.

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